IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.7995 OF 2004

Shri Deepak Gorakhnath Nikumbh .. Petitioner

Versus

The State of Maharashtra ..Respondents

Mr.N.V.Bandivadekar for Petitioner

Mr.R.D.Rane A.G.P.for Respondents

..

CORAM : A.P.Shah and

S.C.Dharmadhikari, JJ

DATE: 2nd November, 2004

P.C.

1. Rule.

2. Respondents waives service. By consent, petition is taken up for hearing.

3. By this petition, the petitioner seeks to challenge the order passed by the respondent no.2

Committee for Scrutiny and Verification of Tribe Claims, Nasik dated 15th July, 2004 rejecting the petitioner's application claiming for verification of the caste claim and invalidating the caste claim of the petitioner as belonging to "Mahadeo Koli" scheduled tribe. The Principal, K.T.H.M. College, Nasik forwarded the application of the petitioner for verification of the scheduled tribe caste certificate. The Scrutiny Committee vide order dated 29th May, 2000 decided that the petitioner does not belong to "Mahadeo Koli" scheduled tribe. The caste certificate was accordingly cancelled and ordered to be confiscated.

4. Being aggrieved, the petitioner filed a writ petition bearing Writ Petition No. 1704 of 2001 in this Court. A Division Bench vide order dated 7th August, 2001 directed the Scrutiny Committee to reconsider the petitioner's caste claim in accordance with law after hearing the petitioner.

5. The petitioner was called for hearing on 17th September, 2003 and he produced in all 17 documents in support of his caste claim. The Vigilance Cell also had investigated into the petitioner's case and submitted its report on 14th March, 2000.

6. The report of the Vigilance Cell inter alia reads as under :

" The ancestral vocation is agriculture and labour and he has the relatives with surname of Khairnar, Bhalerao, Bachhav, Rathod, Jagtap, Kakulate Bendkule, Kadale, Charoskar, Pardhi and they (relatives) reside at Vani, Dindori, Palkhod, Nashik, Deola, Lohoner etc. They celebrate all the festivals of Hindu religion. The family deity is Shree Saptashringi Devi, Vanigad and he knows about Phadki, Wagh Baras, Mawal, Naver, Dangan, Hirava Genda, Dongar Bohade. Before marriage they perform Jagaran Gondhal in front of God Khandoba. Father is illiterate. Shri Ramdas Charoskar MLA Shri Bhagwantrao Gaikwad Shri Khetol Guruji of Panchavati are their social and political leaders. After the child is born they perform pooja of Satvi on the 5th day. There is custom of cremating after death. The women folk wear 6 yard sari up to the knee level and choli whereas the men folk wear Dhoti, Langoti, Bandi, Kopari. Women wear light metal ornaments. Mother's relative place is Badel Taluka Malegaon and her surname is Ahire. She has certificate but not the validity (certificate). He has given such statement.

. Other enquiry : The candidate's father has obtained caste certificate of Hindu Mahadeo Koli Scheduled Tribe in the year 1968 from the Tahsildar Satana. On 4.7.1969 he came to be employed in the service with police force at P.T.C. Nasik (presently MPA). On the first page of said service Book (Xerox copy) the entry of caste is "Mahadeo Koli". In the school register of candidate's paternal uncle Jibhan Lala Nikumbh the entry of caste is Hindu Mahadeo Koli and it is dated 17.7.1957. The entries in the Birth and Death Register is of recent times. Old entries are of Hindu Koli. They state that while taking admission in the school, the entry of Hindu Koli were wrongly made. When enquired personally, they say that some of their near relatives have received validity certificates and the information regarding the same can be collected and produced at the time of hearing. Such instructions are given to him. Considering the record prior to 1950 it is as Hindu Koli and the subsequent record is seen to be as Mahadeo Koli.

. They say that while entering the name of candidate's father in the primary school,

> Special Precaution (Care) was not taken and since the gravity (seriousness) and importance was not realised, the entry of Hindu Koli came to be made. From perusal of the records of their other relatives in the village, it is seen that they are also as above. The rituals, customs, traits and other information seems to be inconsonance with the Hindu Mahadeo Koli Scheduled Tribe."

7. The Scrutiny Committee without considering the report made by the Vigilance Cell again proceeded to dismiss the petitioner's caste claim solely on the ground that in the school register, caste of the father of the petitioner is mentioned as " Koli" and not " Mahadeo Koli ". The Committee was of the view that this being the oldest record and is in respect of the petitioner's father, does get probative value. All other documents have been granted by mentioning the caste as " Mahadeo Koli " so that the benefits of scheduled tribe can be availed. In that view of the matter, the Scrutiny Committee rejected the caste claim of the petitioner.

8. We have heard learned counsel for the petitioner and learned A.G.P. Mr. Rane appearing for the respondents. In our view, it will not be possible to sustain the order of the Scrutiny Committee. In the case of Kum.Madhuri Patil vs Additional Comissioner, Tribal Development reported in AIR 1995 S.C.94 the Supreme Court issued directions for constitution of the Vigilance Cell to personally verify and collect all the facts of the social

status claimed by a candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration if any. He should also examine the parent, guardian or the candidate in relation to their caste or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma in particular of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc by the concerned castes or tribes or tribal communities etc. Thus, it is seen that the report of the Vigilance Cell assumes greates importance and the recommendation of the Vigilance Cell cannot be turned down casually or lightly without giving cogent reasons for not accepting the report.

9. In the instant case, the Vigilance Cell has conducted a very exhaustive enquiry and submitted a report on the basis of the survey conducted by the Cell. It appears that the Scrutiny Committee has completely brushed aside the report of the Vigilance Cell and only on the basis of one solitary document namely the school leaving certificate of the petitioner’s father holding that the petitioner belong to Koli caste. The Scrutiny Committee has

also failed to discuss other voluminuous evidence produced by the petitioner on record. The Scrutiny Committee however, ignored the documents by relying upon on one solitary document in the form of school leaving certificate of petitioner's father.

10. In the circumstances, order of the Scrutiny Committee cannot be sustained. We therefore, quash and set aside the impugned order dated 15th July, 2004 and direct the Scrutiny Committee to grant to the petitioner caste certificate as belonging to " Mahadeo Koli " scheduled tribe within a period of three months from today.

11. Rule is made absolute accordingly in terms of the order mentioned above.

12. Certified copy is expedited.

A.P.SHAH, J

S.C.DHARMADHIKARI, J